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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/529,043      | 04/03/2000  | BERND EIKMANN        | 21437               | 6651             |

535 7590 08/06/2002

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EXAMINER

STEADMAN, DAVID J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1652

DATE MAILED: 08/06/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Applicati n N .

09/529,043

Applicant(s)

EIKMANN'S ET AL.

Examiner

David J. Steadman

Art Unit

1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 July 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.

4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 64,65,70,72-78 and 81.Claim(s) objected to: NONE.Claim(s) rejected: 71,79 and 80.Claim(s) withdrawn from consideration: NONE.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☒ Other: See the attached interview summary

Continuation of 3. Applicant's reply has overcome the following rejection(s): written description and enablement rejections under 35 USC 112, first paragraph and rejection under 35 USC 102(b).

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### **ADVISORY ACTION**

#### ***Application Status***

Claims 64, 65, and 70-81 are pending in the application.

Applicants' cancellation of claims 52-63, and 66-69 and addition of claims 70-81 in the after-final amendment of Paper No. 18, filed 07/09/02, is acknowledged.

The request for reconsideration is acknowledged, however, the amendment to the claims does not place the claims in condition for allowance for the reasons discussed below.

1. In view of applicants' amendment to claims 70, 72-78, and 81, the written description and enablement rejections under 35 USC 112, first paragraph and the rejection under 35 USC 102(b) are withdrawn.
2. Claim 71 is rejected under 35 USC 112, second paragraph, as being confusing in the recitation of "a preceding tac promoter". It appears from the specification that nucleotides 20-109 of SEQ ID NO:1 are disclosed as being a tac promoter sequence. Claim 71 is confusing as it appears from the claim that the pyruvate carboxylase gene is preceded by two tac promoters. It is suggested that, for example, applicants amend claim 71 to depend from claim 65 and not claim 70.
3. The written description rejection of claims 79 and 80 under 35 U.S.C. 112, first paragraph, is maintained. Applicants argue the claims have been amended to overcome the rejection. Applicants' argument is not found persuasive. The rejection is maintained for the reasons of record.
4. The enablement rejection of claims 79 and 80 under 35 U.S.C. 112, first paragraph, is maintained. Applicants argue the claims have been amended to overcome the rejection. Applicants' argument is not found persuasive. The rejection is maintained for the reasons of record.

#### ***Conclusion***

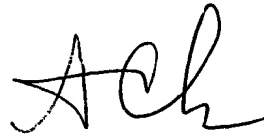
5. Claims 64, 65, 70, 72-78, and 81 are in condition for allowance.
6. Claims 71, 79, and 80 are rejected.

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7. The amendment to the claims as discussed in a telephonic interview with Jonathan Myers (see attached interview summary) on 07/16/02 would appear to overcome the rejections of claims 71, 79, and 80.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Steadman, whose telephone number is (703) 308-3934. The Examiner can normally be reached Monday-Friday from 7:30 am to 2:00 pm and from 3:30 pm to 5:30 pm. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Ponnathapura Achutamurthy, can be reached at (703) 308-3804. The FAX number for this Group is (703) 308-4242. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Art Unit receptionist whose telephone number is (703) 308-0196.

David J. Steadman, Ph.D.



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